

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-04-IH-0394
)	
)	
BCE Nexxia Corporation)	NAL/Acct. No. 200532080143
)	
)	
Apparent Liability for Forfeiture)	FRN No. 0008-2783-76
)	

**NOTICE OF APPARENT LIABILITY
FOR FORFEITURE**

Adopted: September 13, 2005

Released: September 13, 2005

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that an international telecommunications carrier that has been providing interstate telecommunications services since at least 2003 and at least indirectly benefiting from the federal programs supporting the telecommunications industry since that time, apparently failed to meet its statutory and regulatory obligations relating to the universal service program. Based upon the facts and circumstances surrounding this matter we conclude that this company is apparently liable for a total forfeiture of \$282,000.

2. We specifically find that BCE Nexxia Corporation (“BCE Nexxia”) has apparently violated sections 54.711(a) of the Commission’s rules by failing to submit certain Telecommunications Reporting Worksheets (“Worksheets”).¹ We also find that BCE Nexxia has apparently violated section 254(d) of the Communications Act of 1934, as amended (the “Act”), and section 54.706(a) of the Commission’s rules by willfully and repeatedly failing to contribute to the Universal Service Fund (“USF”).²

3. We are resolved to ensure a level playing field for all companies that are required to contribute to the maintenance of our various Congressionally-mandated programs including the federal universal service program. The failure of a carrier to fulfill its obligation to contribute to these programs has a direct and significant detrimental impact on the programs and on other industry participants because that failure removes from the base of contributions telecommunications revenues that otherwise should be included, thereby forcing other telecommunications carriers to shoulder additional costs associated with the programs. Thus, this NAL and others like it, represent one element in a comprehensive approach to improving the efficacy and fairness of the universal service program as well as reducing waste, fraud and abuse in the program.

¹ 47 C.F.R. §§ 54.711(a).

² 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(a).

II. BACKGROUND

4. The Commission is charged by Congress with regulating interstate and international telecommunications and ensuring that providers of such telecommunications comply with the requirements imposed on them by the Act and our rules.³ The Commission also has been charged by Congress to establish, administer and maintain various telecommunications regulatory programs, including the federal universal service program, and to fund these programs through assessments on the telecommunications providers that benefit from them. To accomplish these goals, the Commission established “a central repository of key facts about carriers” through which it could monitor the entry and operation of interstate telecommunications providers to ensure, among other things, that they are qualified, do not engage in fraud, and do not evade oversight.⁴ Commission rules require that, upon entry or anticipated entry into interstate telecommunications markets, telecommunications carriers register by submitting information on an FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet.⁵ The Commission also requires telecommunications providers to submit financial information on annual and, with some exceptions not applicable to BCE Nexxia, quarterly short-form Worksheets to enable the Commission to determine and collect the statutorily mandated program assessments.⁶

5. The Telecommunications Act of 1996 codified Congress’ historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services.⁷ In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁸ In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the Universal Service Fund based upon their interstate and international end-user telecommunications revenues.⁹ Failure by some providers to pay their share into the USF skews the playing field by providing non-paying providers with an economic advantage over their competitors, who must shoulder more than their fair share of the costs of the USF.

³ See, e.g., 47 U.S.C. § 151.

⁴ See *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024 (2000) (“*Carrier Selection Order*”). BCE Nexxia apparently began providing interstate telecommunications services at some point in 2003 but did not register until after it received a Bureau inquiry in 2004. See ¶ 7 *infra*.

⁵ 47 C.F.R. § 64.1195.

⁶ See 47 U.S.C. §§ 159(a),(b); 225(d)(3); 251(e)(2); 254(d). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review*, Report and Order, 14 FCC Rcd 16602 (1999). The next year the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Carrier Selection Order*, 15 FCC Rcd at 16026.

⁷ The Telecommunications Act of 1996 amended the Communications Act of 1934. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁸ 47 U.S.C. § 254(d).

⁹ 47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier’s projected, rather than historical, revenues. *Id.*

6. The Commission has established specific procedures to administer the universal service program. A carrier must file quarterly and annual Worksheets for the purpose of determining its USF payments.¹⁰ These periodic filings trigger a determination of liability, if any, and subsequent billing and collection by the Universal Service Administrative Company (“USAC”).¹¹ USAC uses the revenue projections submitted on the quarterly filings to determine each provider’s universal service contribution amount.¹² Carriers are required to pay their monthly USF contribution by the date shown on their invoice.¹³ The Commission’s rules explicitly warn contributors that failure to file their forms or submit their payments potentially subjects them to enforcement action.¹⁴

7. BCE Nexxia is a Canada-based telecommunications carrier that long has provided international telecommunications in the United States. BCE Nexxia also has been providing interstate telecommunications services in the United States since at least 2003.

8. In 2004, the Enforcement Bureau (“Bureau”) audit staff sought to identify resellers of telecommunications services that failed to register as telecommunications service providers with the Commission, and, thus, may also have failed to satisfy various Commission program requirements.¹⁵ To identify such resellers, the Bureau audit staff compared lists of resellers provided by wholesale service providers against the Commission’s central repository of registered telecommunications service providers with filer identification numbers. If a reseller did not appear to have an identification number, the audit staff sent an inquiry to that reseller. On March 30, 2004, the Bureau’s audit staff sent a letter to BCE Nexxia requesting information pertaining to BCE Nexxia’s compliance with section 64.1195 of the Commission’s rules.¹⁶ Thereafter, BCE Nexxia registered and belatedly filed on April 30, 2004, the annual Worksheet due April 1, 2004. BCE Nexxia then responded to the Bureau’s audit staff that it had registered and filed its first annual Worksheet.¹⁷

¹⁰ Upon submission of a Form 499-A registration, the carrier is issued a filer identification number by USAC. The filer identification number is then to be included on all further filings by the company and is used by the Commission and its administrators to track the carrier’s contributions and invoices.

¹¹ The Commission has appointed USAC as the administrator of federal universal service support mechanisms and has made it responsible for billing and collection of USF contributions. 47 C.F.R. §§ 54.701(a), 54.702(b).

¹² Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001); 47 C.F.R. § 54.709(a).

¹³ See *Globcom, Inc. Notice of Apparent Liability for Forfeiture and Order*, 18 FCC Rcd 19893, 19896 (2003) (“*Globcom*”); 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.”). See, e.g., “Proposed Third Quarter 2003 Contribution Factor,” *Public Notice*, 18 FCC Rcd 11442 (WCB 2003) (“Contribution payments are due on the date shown on the [USAC] invoice.”). A carrier that does not file Worksheets may not receive an invoice from USAC, but is nonetheless required to contribute to the USF, unless its revenues are considered *de minimis*. The Act and our rules do not condition USF contribution payment on receipt of an invoice or other notice from USAC. See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b); *Globcom*, 18 FCC Rcd at 19896, n. 22. The instructions for the Telecommunications Reporting Worksheet include tables for carriers to project or determine their approximate annual contribution based on their projected telecommunications revenues. Providers whose annual contribution is less than \$10,000 are covered by the Commission’s “*de minimis* rule” and are exempted from contributing to the USF. 47 C.F.R. § 54.708. As discussed in more detail below, BCE Nexxia’s interstate revenues in 2004 and 2005 do not qualify for the *de minimis* exception.

¹⁴ 47 C.F.R. § 54.713.

¹⁵ See 47 C.F.R. § 64.1195(a).

¹⁶ See Letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, to BCE Nexxia dated March 30, 2004 (“March 30 Audit Letter”).

¹⁷ See electronic mail response to the March 30 Audit Letter from Paula Kerr, BCE Nexxia, dated April 30, 2004.

9. After determining that BCE Nexxia appeared to have failed to timely register with the Commission or timely file certain Telecommunications Reporting Worksheets, the Bureau issued letters of inquiry (“LOIs”) to BCE Nexxia on September 8, 2004, December 6, 2004 and June 22, 2005.¹⁸ The LOIs directed BCE Nexxia, among other things, to submit sworn written responses to a series of questions relating to BCE Nexxia’s apparent failure to register and file Telecommunications Reporting Worksheets and to make mandated federal telecommunications regulatory program payments prior to and during the investigation. BCE Nexxia responded to the LOIs on October 19, 2004, December 15, 2004, and July 29, 2005, providing documents and information as directed by the Bureau.¹⁹

10. While BCE Nexxia late-filed the 2004 annual Worksheet, it did not file any 2004 quarterly Worksheets, despite receiving multiple letters from the Bureau regarding its compliance with the reporting rules. On November 24, 2004, USAC notified BCE Nexxia that it had not received the Worksheet due November 1, 2004 (which would provide revenue projections for the first quarter of 2005 and enable USAC to prepare first quarter invoices). BCE Nexxia replied that it had not filed the November 2004 Worksheet because it qualified for the *de minimis* exception and, thus, claimed that it was not required to file.²⁰ In 2005, BCE Nexxia timely filed the quarterly Worksheets due February 1, May 1, and August 1, 2005 and the annual Worksheet due April 1, 2005.

III. DISCUSSION

11. Under section 503(b)(1) of the Communications Act of 1934, as amended (the “Act”), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²¹ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²² The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act²³ and the Commission has so interpreted the term in the section 503(b) context.²⁴ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁵ “Repeated” means that the act was committed or omitted more than once, or lasts more

¹⁸ Letters from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to David C. Kidd, Vice President, Regulatory Law, BCE Nexxia, dated September 8, 2004 and December 6, 2004, and to Jonathan Blakey, Assistant General Counsel, BCE Nexxia, dated June 22, 2005.

¹⁹ See responses from Isabelle Courville, Chairman and President, BCE Nexxia, to Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated October 19, 2004, and from Jonathan Blakey, Assistant General Counsel, Regulatory Law, BCE Nexxia, and Mirko Bibic, Vice President, Regulatory Law, BCE Nexxia, to Carla Conover, Investigations and Hearings Division, Enforcement Bureau, dated December 15, 2004 and July 29, 2005, respectively.

²⁰ See electronic mail from Suhail Smith, NECA Services (USAC’s contractor for data collection duties at that time) to Paula M. Kerr, BCE Nexxia, and the electronic mail response from Paula M. Kerr to Suhail Smith, both dated November 24, 2004.

²¹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

²² 47 U.S.C. § 312(f)(1).

²³ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁴ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

²⁵ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

than one day.²⁶ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁷ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.²⁸ As set forth below, we conclude under this standard that BCE Nexxia is apparently liable for forfeiture for its apparent willful and repeated violations of section 254(d) of the Act and sections 54.711(a) and 54.706(a) of the Commission's rules.²⁹

12. The fundamental issues in this case are whether BCE Nexxia apparently violated the Act and the Commission's rules by: (1) willfully or repeatedly failing to file certain Telecommunications Reporting Worksheets; and (2) willfully or repeatedly failing to make requisite contributions toward the USF. We answer these questions affirmatively. Based on a preponderance of the evidence, we conclude that BCE Nexxia is apparently liable for a forfeiture of \$282,000 for apparently willfully and repeatedly violating section 254(d) of the Act and sections 54.711(a) and 54.706(a) of the Commission's rules.³⁰

13. Specifically, we propose the following forfeitures for apparent violations within the last year: (1) \$50,000 for failure to file the Telecommunications Reporting Worksheet due November 1, 2004; and (2) \$232,000 for failure to make eight monthly USF contributions within the past twelve months. Although we propose forfeitures only for apparent violations within the last year, we note BCE Nexxia's noncompliance in prior years as useful background demonstrating the context of the misconduct that is within the statute of limitations period and thus covered by this NAL.

A. Submission of Telecommunications Reporting Worksheets

14. We conclude that BCE Nexxia apparently has violated section 54.711(a) of the Commission's rules by willfully and repeatedly failing to file certain annual or quarterly Telecommunications Reporting Worksheets at least since 2003, when it began providing interstate telecommunications services, through November 1, 2004. Section 54.711(a) of the Commission's rules clearly establishes a carrier's obligation to file periodic Telecommunications Reporting Worksheets.³¹ A carrier's failure to file these Worksheets as required has serious implications for the USF. As discussed above, the filing of a Telecommunications Reporting Worksheet prompts a determination of liability for, and subsequent billing and collection of, USF contributions. The failure of a carrier such as BCE Nexxia to abide by its federal filing obligation has a direct and profound detrimental impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers additional economic burdens associated with the federal universal service program.³² Consequently, a carrier's failure to file required Worksheets thwarts the very purpose for

²⁶ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁸ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) ("*SBC Forfeiture Order*").

²⁹ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.711(a), 54.706(a).

³⁰ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.711(a), 54.706(a).

³¹ See 47 C.F.R. §§ 54.711(a).

³² Sixty days prior to the start of each quarter, USAC is required to provide the Commission with a projection of the high cost, low income, schools and libraries, and rural health care funding requirements for the following quarter. See www.universalservice.org/overview/filings. Based on USAC's projection of the needs of the USF, and revenue projections from the registered carriers subject to universal service requirements, the Commission establishes a specific percentage of interstate and international end-user revenues that each subject telecommunications provider must contribute toward the USF. This percentage is called the contribution factor. The contribution factor, and,

which Congress enacted section 254(d) – to ensure that every interstate carrier “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”³³ Viewed in this context, the Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission’s universal service program.

15. As noted above, BCE Nexxia untimely registered and late-filed the 2004 annual Telecommunications Reporting Worksheet (reporting 2003 revenue and due April 1, 2004) on April 30, 2004 and did so only after receiving an inquiry from the Commission.³⁴ BCE Nexxia did not file the quarterly Worksheets due May 1, August 1, and November 1, 2004.³⁵ On November 24, 2004, USAC notified BCE Nexxia that it had not received the Worksheet due November 1, 2004 (which would provide revenue projections for the first quarter of 2005 and enable USAC to prepare first quarter invoices). BCE Nexxia replied that it had not filed the November 2004 Worksheet because it qualified for the *de minimis* exception and claimed it thus was not required to file.³⁶ We reject this contention. BCE Nexxia’s own subsequent filings establish that BCE Nexxia accrued 2004 interstate revenues that placed it well above the range of the *de minimis* exception by November 1, 2004. Thus, it was obligated to file the quarterly Worksheet due November 1.³⁷ Based on a preponderance of the evidence, we find that BCE Nexxia apparently has violated section 254 of the Act and section 54.711 of the Commission’s rules³⁸ by willfully and repeatedly failing to file required information with the Commission on multiple occasions since at least 2003, including the failure to make the November 1, 2004 quarterly filing.

B. Universal Service Contributions

16. We further conclude that BCE Nexxia apparently violated section 254(d) of the Act and section 54.706 of the Commission’s rules by willfully and repeatedly failing to contribute to universal service support mechanisms.³⁹ Section 54.706(c) of the Commission’s rules unambiguously directs that

consequently, the amount owed to the USF by each affected telecommunications company, changes each quarter, depending on the needs of the USF and carrier-provided revenue projections. *See* www.fcc.gov/wcb/universal_service/quarter. Thus in cases where a carrier, such as BCE Nexxia, fails to file required Worksheets reporting its revenue projections in a timely fashion, its revenues are excluded from the contribution base from which universal assessments are derived, and the economic burden of contributing falls disproportionately on carriers that have satisfied their reporting obligations.

³³ 47 U.S.C. § 254(d).

³⁴ *See* March 30 Audit Letter. The Commission has repeatedly held that post-investigation corrective measures are not sufficient to avoid enforcement action. *See AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 (2002); *America’s Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355, ¶ 15 (2001); *Coleman Enters., Inc. d/b/a/ Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24388, ¶ 8 (2000).

³⁵ *See* BCE Nexxia’s response dated July 29, 2005. This information is confirmed by USAC’s records.

³⁶ *See* electronic mail from Suhail Smith, NECA Services (USAC’s contractor for data collection duties at that time) to Paula M. Kerr, BCE Nexxia, and the electronic mail response from Paula M. Kerr to Suhail Smith, both dated November 24, 2004.

³⁷ *See* BCE Nexxia’s quarterly February 1, 2005 Worksheet (reporting actual revenue for the last quarter of 2004 and projecting revenue for the second quarter of 2005) and its 2004 and 2005 annual Worksheets (reporting annual revenue for 2003 and 2004, respectively). These filings show that BCE Nexxia’s 2004 interstate telecommunications revenue exponentially exceeded that of 2003 and that revenue reporting by BCE Nexxia on November 1, 2004 would have revealed that it was not *de minimis*. Telecommunications providers are required to project good faith estimates of quarterly revenue. *See, e.g., Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971 (2002).

³⁸ 47 U.S.C. § 254; 47 C.F.R. § 54.711.

³⁹ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

“entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs.”⁴⁰ During the relevant period, BCE Nexxia was required, pursuant to section 54.706(b) of the Commission’s rules, to contribute to universal service mechanisms based upon projected revenues.⁴¹ BCE Nexxia did not make any universal service contributions until June 13, 2005.⁴² BCE Nexxia claims that prior to April 2005, it was “exempt from contribution to the USF based on the *de minimis* rule” and that it “became subject to USF payments by virtue of its 2005 Form 499A filing for the year 2004.”⁴³ We reject these contentions. The “*de minimis* rule” states that “[i]f a contributor’s contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution.”⁴⁴ As discussed above, during 2004 and 2005, BCE Nexxia’s actual interstate revenues far exceeded the amount that would generate a contribution obligation greater than \$10,000. Thus, during the relevant periods, BCE Nexxia was required, pursuant to section 54.706(b) of the Commission’s rules, to contribute to universal service mechanisms based upon projected revenues.⁴⁵ BCE Nexxia did not become subject to USF contribution obligations only when it chose to report the 2004 revenue information necessary for USAC to calculate its 2004 contribution, nor did its failure to file quarterly Worksheets relieve BCE Nexxia of the obligation to pay USF contributions. As we previously have stated:

[c]arrier nonpayment of universal service contributions undermines the efficiency and effectiveness of the universal service support mechanisms. Moreover, delinquent carriers may obtain a competitive advantage over carriers complying with the Act and our rules. We consider universal service nonpayment to be a serious threat to a key goal of Congress and one of the Commission’s primary responsibilities.⁴⁶

Based on a preponderance of the evidence, we find that BCE Nexxia apparently has violated sections 254(d) of the Act and 54.706 of the Commission’s rules by willfully and repeatedly failing to make eight monthly universal service contribution payments.

C. Proposed Forfeiture

17. Section 503(b)(1)(B) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁴⁷ For the apparent violations in this case, section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.325 million for a single act or failure to act for violations.⁴⁸ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and

⁴⁰ 47 C.F.R. § 54.706(c).

⁴¹ See 47 C.F.R. § 54.706(c).

⁴² See BCE Nexxia’s July 29, 2005 response. This information also is confirmed by USAC’s records.

⁴³ See BCE Nexxia response dated July 29, 2005.

⁴⁴ 47 C.F.R. § 54.708

⁴⁵ See 47 C.F.R. § 54.706(c).

⁴⁶ *Globcom*, 18 FCC Rcd at 19903 ¶ 26.

⁴⁷ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

⁴⁸ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). Effective September 7, 2004, the Commission amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. See *Amendment of Section 1.90 of the Commission’s Rules*, Order, 19 FCC Rcd 10945, 10946 ¶ 6 (2004).

gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁴⁹

18. Under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that occurred within one year of the date of this NAL.⁵⁰ Nevertheless, section 503(b) does not bar us from assessing whether BCE Nexxia’s conduct prior to that time period apparently violated the Act or our rules in determining the appropriate forfeiture amount for those violations within the statute of limitations.⁵¹ Therefore, although we find that BCE Nexxia apparently violated the Act and our rules in prior periods, we propose forfeitures here only for violations that occurred within the last twelve months.

19. In the past, we have held that a substantial forfeiture of \$50,000 is warranted for a carrier’s failure to file a Telecommunications Reporting Worksheet for revenue reporting purposes.⁵² As we noted above, a carrier’s obligation to file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF program. By ignoring its 2004 reporting obligations, BCE Nexxia unilaterally shifted to compliant carriers and their customers the economic costs associated with the universal service program. Therefore, we find that BCE Nexxia is apparently liable for a \$50,000 forfeiture for its failure to file the quarterly Worksheet due November 1, 2004.

20. Based on the facts above, it also appears that BCE Nexxia has failed to make requisite contributions into the USF during 2004 and until June 13, 2005. Nonpayment of universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier’s failure to make required universal service contributions frustrates Congress’ policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.⁵³ The Commission has established a base forfeiture amount of \$20,000 for each month in which a carrier has failed to make required universal service contributions.⁵⁴ Consequently, we find BCE Nexxia apparently liable for a base forfeiture of \$160,000 for its willful and repeated failure to make universal service contributions for eight months.⁵⁵ As discussed below, however, that base amount is subject to an upward adjustment.

⁴⁹ 47 U.S.C. § 503(b)(2)(D); *see also Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100, ¶ 27 (1997) (“*Forfeiture Policy Statement*”), recon. denied 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

⁵⁰ 47 U.S.C. § 503(b)(6)(B); 47 C.F.R. § 1.80(c)(3).

⁵¹ *See, e.g., Globcom*, 18 FCC Rcd at 19903; *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37 (1967).

⁵² *Globcom*, 18 FCC Rcd at 19905; *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-147, 2005 WL 1750417 (F.C.C.) at ¶ 25 (released July 25, 2005); *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-145, 2005 WL 1750418 (F.C.C.) at ¶ 27 (released July 25, 2005); *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-146, 2005 WL 1750420 (F.C.C.) at ¶ 31 (released July 25, 2005).

⁵³ *See* 47 U.S.C. § 254(d).

⁵⁴ *See Globcom*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27. *See also Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 26; *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 28; *Telecom Mgmt., Inc.*, FCC 05-156, 2005 WL ____ (F.C.C.) at ¶ 17 (released Aug. 12, 2005); *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 32.

⁵⁵ The eight months at issue are September 2004 to April 2005. As discussed above, although it is not clear exactly when BCE Nexxia accrued 2004 interstate telecommunications revenue in excess of *de minimis* amounts, BCE Nexxia’s own reporting for 2004 indicates that it should have been contributing at least by September 2004, if not well before.

21. In the past, we have calculated upward adjustments to forfeitures for failure to make USF payments based on one-half of the company's approximate unpaid contributions.⁵⁶ During the course of this investigation, BCE Nexxia has filed the financial information necessary for USAC to determine the contribution amounts BCE Nexxia would have been assessed had it properly filed quarterly Worksheets prior to February 1, 2005. Therefore, taking into account all the factors enumerated in section 503(b)(2)(D) of the Act, we propose an upward adjustment of \$72,000, approximately one-half of the carrier's unpaid USF contributions at the time it made its first payment in June 2005, for BCE Nexxia's apparent nonpayment violations. We thus find BCE Nexxia apparently liable for a total proposed forfeiture of \$232,000 for its apparent willful and repeated failure to make contributions into the USF.

IV. CONCLUSION

22. In light of the seriousness, duration and scope of the apparent violations, and to ensure that a company with substantial revenues such as BCE Nexxia does not consider the proposed forfeiture merely "an affordable cost of doing business,"⁵⁷ we find that a proposed forfeiture in the amount of \$282,000 is warranted. As discussed above, this proposed forfeiture amount includes: (1) a total proposed penalty of \$50,000 for failing to file the Telecommunications Reporting Worksheet due November 1, 2004; and (2) a total proposed penalty of \$232,000 for failing to make eight monthly universal service contributions within the past year.

23. We caution that additional violations of the Act or the Commission's rules could subject BCE Nexxia to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of BCE Nexxia's operating authority, including disqualification of BCE Nexxia's principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁵⁸

V. ORDERING CLAUSES

24. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that BCE Nexxia is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$282,000 for willfully and repeatedly violating the Act and the Commission's rules.

25. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, BCE Nexxia SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

26. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

⁵⁶ See, e.g., *Globcom, Inc.*, 18 FCC Rcd at 19904.

⁵⁷ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099; see also 47 C.F.R. § 1.80(b)(4).

⁵⁸ See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

27. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

28. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

29. Requests for payment of the full amount of this NAL under an installment plan should be sent to Chief, Credit and Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁵⁹

30. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY AND ORDER shall be sent by certified mail, return receipt requested, to Jonathan Blakey, Esq., Assistant General Counsel, Regulatory Law, 14th Floor, 110 O'Connor, Ottawa, Ontario, Canada K1P 1H1.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁹ See 47 C.F.R. § 1.1914.